


CARLSMITH BALL LLP

DAVID LEDGER
ELYZE J. MCDONALD
Bank of Hawaii Bldg., Suite 401
134 West Soledad Avenue, P.O. Box BF
Hagåtña, Guam 96932-5027
Tel No. 671.472.6813

Attorneys for Plaintiff
Americopters, L.L.C.

FILED
DISTRICT COURT OF GUAM

FEB 15 2007 

MARY L.M. MORAN
CLERK OF COURT

IN THE DISTRICT COURT OF GUAM

AMERICOPTERS, L.L.C.,

Plaintiff,

vs.

FEDERAL AVIATION ADMINISTRATION,

Defendant.

CIVIL CASE NO. CV03-00005

**OBJECTION TO MAGISTRATE
JUDGE RECOMMENDATION TO SET
ASIDE DEFAULT; DECLARATION
OF SERVICE**

On February 14, 2007 the Court filed an Order granting Plaintiff's motion to amend its complaint and recommending that the District Judge set aside the default presently entered against the Defendant Federal Aviation Administration. For the reasons stated below, Americopters objects to the Recommendation To Set Aside the Default.

As the Court noted in its February 14, 2007 Order, counsel for the parties appeared before the Court in *August 2006*, at which time the Court reminded counsel for Defendant that that the Defendant had yet to file an answer to the (original) complaint after this action was remanded by the Ninth Circuit. See Feb. 14, 2007 Order at p.2, lines 9-10. Even so, Defendant ignored the Court never bothering to file an answer, the result of which is the existing default

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entered on November 20, 2006. Only then did Defendant decide to pay any attention to this case moving on November 29, 2006 to set aside the default. Plaintiff filed its opposition on December 13, 2006.

As pointed out in Plaintiff's opposition, Defendant's failure to file an answer is but one example of Defendant's lack of diligence and ignoring civil and local rules and the Court should not set aside the default unless and until Defendant complies with the Federal Rules of Civil Procedure and this Court's Local Rules. In particular, Defendant has yet to meet Rule 26 (a)(1) initial disclosure requirements. Though Defendant has disclosed the names of persons which may have discoverable information, Defendant has not disclosed even one document. Instead, Defendant simply refers Plaintiff "to the record on appeal at the Ninth Circuit" as the documents Defendant may rely on for its claims and defenses. That is not a proper disclosure under Rule 26.

Rather, it is Defendant's obligation to cull out the documents from the Ninth Circuit record and disclose those particular documents to Plaintiff as Rule 26 disclosures. One of the purposes of disclosures under Rule 26 is to alert each party to the documents the other party considers pertinent to and useful in setting up claims and defenses. To simply refer to the entire record on appeal as "Rule 26 disclosures" hardly accomplishes the intended purpose of the Rule.

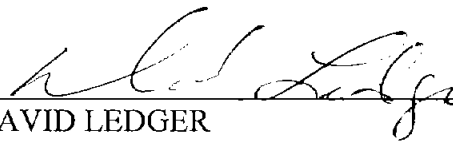
Therefore, and in the circumstances now existing, Plaintiff respectfully requests:

1. The Court decline the Magistrate's Recommendation to set aside the default; and
2. An Order of Default Judgment directing Plaintiff to submit proof of the amount of its damages; or alternatively
3. An Order directing Defendant to forthwith make a proper disclosure of documents under Rule 26; and

4. That the Court withhold ruling on the Recommendation To Set Aside the Default until such time as the Court is satisfied that Defendant has complied with Rule 26(a)(1).

DATED: Hagåtña, Guam, February 15, 2007.

CARLSMITH BALL LLP




DAVID LEDGER
ELYZE J. MCDONALD
Attorneys for Plaintiff
Americopters, L.L.C.

DECLARATION OF SERVICE

I, David Ledger, hereby declare under penalty of perjury of the laws of the United States, that on February 15, 2007, I will cause to be served, via hand delivery, a true and correct copy of **OBJECTION TO MAGISTRATE JUDGE RECOMMENDATION TO SET ASIDE DEFAULT; DECLARATION OF SERVICE** upon the following Counsels of record:

Mikel W. Schwab
Assistant U.S. Attorney
OFFICE OF THE UNITED STATES ATTORNEY
DISTRICT OF GUAM AND CNMI
Suite 500, Sirena Plaza
108 Hernan Cortez Avenue
Hagåtña, Guam USA 96910
Attorneys for Plaintiff United States of America

Executed this 15th day of February 2007 at Hagåtña, Guam.



DAVID LEDGER